

**Comments of David Heinen of the N.C. Center for Nonprofits
House Judiciary II Subcommittee on H.B. 482 – Tuesday, July 28, 2015**

Thank you Mr. Chair.

On behalf of the N.C. Center for Nonprofits, I wanted to bring to your attention a potential unintended consequence of the employee misclassification reform bill (H.B. 482) that could affect nonprofits. I was hoping the subcommittee would be amenable to a small clarifying change in a PCS.

Our concern is that H.B. 482 may be interpreted to create new penalties for nonprofit organizations that do not provide workers' compensation to uncompensated board officers.

As background, the definition of "employees" in G.S. 97-2(2) includes "[e]very executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation." This definition has been interpreted to mean that nonprofit board officers are "employees" within the definition of this statute. We have been working with several of your fellow legislators on clarifying language to address this concern. Clarifying language that would exclude volunteer board officers of nonprofits from the definition of "employee" in G.S. 97-2(2) has been included in H.B. 760 (Section 1.3) and H.B. 765 (Section 2.3).

Our concern is that, unless this clarifying language is enacted, nonprofits may be subject to the new penalties set forth H.B. 482, including the \$1,000 fine and the five-year prohibition on contracting with the state, if they fail to provide workers' compensation for their volunteer board members.

The reasoning is that:

1. Uncompensated nonprofit board officers are within the current definition of "employee" in G.S. 97-2(2).
2. In some factual situations, by the nature of being volunteers rather than paid workers, these uncompensated nonprofit board officers may not meet the eight-part *Hayes* test as independent contractors

that would be codified in H.B. 482. Therefore, these volunteers would be within the definition of “employee” in H.B. 482.

This unintended consequence could be remedied by adding the following language at the end of the definition of “employee” at the end of line 26 of page 1 of version 2 of the bill (end of line 20 of page 1 of the PCS):

“The term does not include an individual who performs only voluntary service for a nonprofit corporation, provided that the person receives no remuneration for the voluntary service other than reasonable reimbursement for expenses incurred with the voluntary service.”

Note that this concern would be moot if either H.B. 760 or H.B. 765 (or another bill with the relevant clarifying language) is enacted.

The N.C. Center for Nonprofits works with 501(c)(3) charitable nonprofits, many of whom could be affected by this bill. We have also heard from other types of nonprofits that are also concerned.

Thank you.